

REMARKS

With this Response, no claims are amended, added, or canceled. Therefore, claims 1-35 are pending.

ELECTION/RESTRICTION

The Office Action asserts that the claims are directed to different inventions, according to the following groups:

Species I: Fig. 2

Species II: Fig. 3

Species III: Fig. 4

Species IV: Fig. 5

However, there is no mention of which claims are purported to pertain to which species. For at least this reason, Applicant respectfully submits that a requirement of Election and Restriction is improper. Nevertheless, Applicant hereby provisionally elects purported Species IV, directed to Fig. 5, and claims 1-35 which are readable thereon, with traverse.

Applicant reserves the right to present the non-elected species/claims in a divisional application.

TRAVERSE OF ELECTION/RESTRICTION

The Office Action asserts at page 2 the following:

This application contains claims directed to the following patentably distinct species: Species I, Figure 2; Species II, Figure 3; Species III, Figure 4; Species IV, Figure 5.

The species are independent or distinct because the embodiments teach various ICs where some have wire connection, some have solder ball connections, some have vias, some have a MEMS, and others don't.

Applicant respectfully submits that the Office Action improperly asserts patentably distinct species based upon Applicant's figures rather than his claims. MPEP § 802, states that the statutory basis for the Restriction of an application comes from the following language: "If two or more *independent and distinct* inventions are *claimed* in one application" restriction may be required (35 U.S.C. 121); "Two or more *independent and distinct* inventions may not be *claimed* in one national application..." (37 CFR 1.141); and "If two or more *independent and distinct* inventions are *claimed* in a single application," the application may be restricted (37

CFR 1.142). Applicant respectfully submits that while it has been asserted that the “application contains claims directed to ... patentably distinct species,” there has been no assertion of which, if any, claims pertain to independent and distinct inventions. While it has been generally averred that “[t]he species are independent or distinct,” there is no specific reference to which *claims* are independent and distinct, therefore Applicant submits that there has been no *valid* assertion that more than one invention has been claimed.

Even assuming that more than one invention has been claimed, for at least the following reasons, Applicant submits that a proper restriction requirement has not been established.

Firstly, MPEP § 806.04(e) states that: “*Species are always the specifically different embodiments.*” (Emphasis in original text). Applicant respectfully submits that the use of phrases such as “in accordance with one embodiment of the invention” (Page 5, Para. 0018), or “[i]n one embodiment” (Page 6, Para. 0020) in reference to figures in Applicant’s application do not restrict each figure to a “specifically different” embodiment. Rather, “the appearance of phrases such as ‘in one embodiment,’ or ‘in another embodiment’ [can] describe various embodiments of the invention, and are not necessarily all referring to the same embodiment.” (Page 15, Para. 0044). “Therefore, the illustrations and examples [in the application] should be construed in an illustrative, and not a restrictive sense. The scope of the invention should be measured solely by reference to the claims.” (Page 15, Para. 0044). Therefore Applicant respectfully submits that the reported figures are merely illustrative, and that references to various embodiments in their descriptions do not restrict them to “specifically different embodiments,” so they can not be species.

Furthermore even if two or more species were claimed, MPEP § 806.04(f) states that: “Where two or more species are claimed, a requirement for restriction to a single species may be proper if the species are mutually exclusive. ... This may ... be expressed by saying that to require restriction between claims limited to species, *the claims must not overlap in scope.*” No assertion has been made that the claims overlap in scope. Rather, Applicant respectfully submits that all claims are readable upon purported Species IV. Therefore, purported Species IV overlaps all other possible purported species, meaning there are no mutually exclusive species.

CONCLUSION

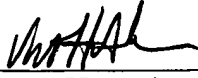
Applicant has made a provisional election with traverse. For at least the foregoing reasons, Applicant submits that the restriction requirement is improper, and contends that examination should proceed on the application as a whole. The Examiner is respectfully

requested to contact the undersigned by telephone if such contact would further the examination of the above-referenced application.

Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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Gayle Bekish

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